

The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered. For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in §76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

§76.1625 Consumer education program on compatibility.

Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to

all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as "Picture-in-Picture," channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

NOTICES THAT MUST BE GIVEN ANNUALLY

§76.1626 Annual notifications.

Cable operators must provide all annual notifications which are required by the following rules: section 76.1623 (availability of signals); section 76.1602 (customer service - general information); section 76.1624 (equipment compatibility offer); and section 76.1625 (consumer education program on compatibility).

NOTE: In addition to the notifications required by FCC Rules, Section 631(a) of the Communications Act, 47 U.S.C. §551(a), also provides as follows:

SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of-

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)-

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

46. A new Subpart U is proposed to be added as follows:

Subpart U -- Documents to be Maintained for Inspection

PUBLIC INSPECTION FILE DOCUMENTS

§76.1700 Records to be maintained locally by cable system operators for public inspection.

(a) Records to be maintained. The operator of every cable television system having 1,000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by §76.1701 (political file); §76.1702 (EEO records available for public inspection); §76.1704 (proof-of-performance test data); and §76.1706 (signal leakage logs and repair records).

(1) A record shall be kept of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of Part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

(2) [Reserved]

(b) Location of records. The public inspection file shall be maintained at the office which the system operator maintains for the ordinary collection of subscriber charges, resolution of subscriber complaints, and other business or at any accessible place in the community served by the system unit(s) (such as a public registry for documents or an attorney's office). The public inspection file shall be available for public inspection at any time during regular business hours.

(c) The records specified in paragraph (a) of this section shall be retained for the period specified in §§76.1701, 76.1702, 76.1704(a), and 76.1706, respectively.

(d) Reproduction of records. Copies of any material in the public inspection file shall be available for machine reproduction upon request made in person, provided the requesting party shall pay the reasonable cost of reproduction. Requests for machine copies shall be fulfilled at a location specified by the system operator, within a reasonable period of time, which in no event shall be longer than seven days. The

system operator is not required to honor requests made by mail but may do so if it chooses.

§76.1701 Political file.

(a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the system of such requests, and the charges made, if any, if the request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

(b) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

§76.1702 Equal employment opportunity.

Every employment unit shall maintain for public inspection a file containing copies of all annual employment reports filed pursuant to Section 76.77. Each document shall be retained for a period of five years. The file shall be maintained at the central office and at every location with more than five full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multiple cable operator shall be maintained at the central office of the headquarters employment unit. The cable entity shall provide reasonable accommodations at these locations for undisturbed inspection of his equal employment opportunity records by members of the public during regular business hours.

§76.1703 Commercial matter on children's programs.

Cable operators airing children's programming on local origination channels must maintain records sufficient to verify compliance with Section 76.225 with respect to children's programming on local origination channels, and make such records available to the public. Such records must be maintained for a period sufficient to cover the limitations period specified in 47 USC Section 503(b)(6)(B).

§76.1704 Proof of performance test data.

(a) The proof of performance tests required by Section 76.601 shall be maintained on file at the operator's local business office for at least five (5) years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request.

(b) The provisions of paragraph (a) of this section shall not apply to any cable television system having fewer than 1,000 subscribers.

NOTE: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with section 76.601, such a log must be retained for the period specified in section 76.601(d).

§76.1705 Performance tests (channels delivered).

The operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers.

§76.1706 Signal leakage logs and repair records.

Cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to Section 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two (2) years and shall be made available to authorized representatives of the Commission upon request.

NOTE: If a signal leakage log is being used to meet proof of performance test recordkeeping requirements in accordance with section 76.601, such a log must be retained for the period specified in section 76.601(d).

§76.1707 Leased access.

If a cable operator adopts and enforces a written policy regarding indecent leased access programming pursuant to Section 76.701, such a policy will be considered published pursuant to that rule by inclusion of the written policy in the operator's public inspection file.

§76.1708 Principal headend.

(a) The operator of every cable television system shall maintain for public inspection the designation and location of its principal headend. If an operator changes the designation of its principal headend, that new designation must be included in its public file.

(b) Such records must be maintained in accordance with the provisions of §76.1700(b).

§76.1709 Availability of signals.

(a) Effective June 17, 1993, the operator of every cable television system shall maintain for public inspection a file containing a list of all broadcast television stations carried by its system in fulfillment of the must-carry requirements pursuant to §76.56 of the rules. Such list shall include the call sign, community of license, broadcast channel number, cable channel number, and in the case of a noncommercial educational broadcast station, whether that station was carried by the cable system on March 29, 1990.

(b) Such records must be maintained in accordance with the provisions of §76.1700(b).

§76.1710 Operator interests in video programming.

(a) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(b) "Attributable interest" shall be defined by reference to the criteria set forth in the NOTES to §76.501 of this part.

§76.1711 Emergency alert system (EAS) tests and activation.

Every cable system of 1,000 or more subscribers shall keep a record of each test and activation of the Emergency Alert System (EAS) procedures pursuant to the requirement of Part 11 of this chapter and the EAS Operating Handbook. These records shall be kept for three years.

§76.1712 Open video system (OVS) requests for carriage.

An open video system operator shall maintain a file of qualified video programming providers who have requested carriage or additional carriage since the previous allocation of capacity. Information regarding how a video programming provider should apply for carriage must be made available upon request.

NOTE 1: An open video system operator will not be required to comply with the regulations contained in this section if there is no open capacity to be allocated at the end of the three year period described in Section 76.1503(c)(2)(ii).

UPON REQUEST DOCUMENTS

§76.1713 Additional upon request documents.

In addition to the documents required to be provided in the "UPON REQUEST DOCUMENTS" section of this subpart, cable operators must provide prospective leased access programmers with the materials required by section 76.1617 (leased access rates and contract).

NOTE: Section 631 of the Communications Act, 47 U.S.C. §551, also contains the following restrictions pertaining to subscriber privacy documents:

SEC. 631. PROTECTION OF SUBSCRIBER PRIVACY.

(a)(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of-

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d); and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h)-

(A) the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

(B) the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term "cable operator" includes, in addition to persons within the definition of cable operator in section 602, any person who (i) is owned or controlled by, or under common ownership or control with, a cable operator, and (ii) provides any wire or radio communications service.

(b)(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to-

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c)(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is-

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h), made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if-

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the-

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator.

(d) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) or pursuant to a court order.

(f)(1) Any person aggrieved by an act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award-

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order-

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.

§76.1714 Commercial leased access rate justification.

Operators shall maintain, for Commission inspection, sufficient supporting documentation to justify their scheduled leased access rates, including supporting contracts, calculations of the implicit fees, and justifications for all adjustments.

§76.1715 Complaint resolution.

Cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. These records shall be maintained for at least a one-year period. Aggregate data based upon these complaints shall be made available for inspection by the Commission and franchising authorities, upon request.

NOTE: Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

§76.1716 FCC rules and regulations.

(a) The operator of a cable television system shall have a current copy of Part 76 and, if subject to the Emergency Alert System (EAS) rules contained in Part 11 of this chapter, an EAS Operating Handbook, and is expected to be familiar with the rules governing cable television systems and the EAS. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost. Copies of the EAS Operating Handbook may be obtained from the Commission's EAS staff, in Washington, DC.

(b) The provisions of paragraph (a) are not applicable to any cable television system serving fewer than 1000 subscribers.

(c) The licensee of a cable television relay station (CARS) shall have a current copy of Part 78, and, in cases where aeronautical obstruction markings of antennas is required, Part 17 of this chapter shall be available for use by the operator in charge. Both the licensee and the operator or operators responsible for the proper operation of the station are expected to be familiar with the rules governing cable television relay stations. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at nominal cost.

§76.1717 Subscriber records and public inspection file.

The operator of a cable television system shall make the system, its public inspection file (if required by §76.1700), and its records of subscribers available for inspection upon request by an authorized representative of the Commission at any reasonable hour.

§76.1718 Compliance with technical standards.

Each system operator shall be prepared to show, on request by an authorized representative of the Commission or the local franchiser, that the system does, in fact, comply with the technical standards rules in part 76, subpart K.

47. A new Subpart V is proposed to be added as follows:

Subpart V -- Reports and Filings

§76.1800 Additional reports and filings.

In addition to the reports and filings required by this subpart, cable operators must provide all notifications which are required by section 1.1155 (annual regulatory user fees). In addition, all cable systems subject to rate regulation must file FCC rate forms pursuant to the Commission's rate rules contained in subparts N and R of this part.

NOTE 1: Cable operators are required by the Copyright Act to make semi-annual filings of Statements of Account with the Licensing Division of the Copyright Office, Library of Congress, Washington, D.C. 20557.

NOTE 2: The Commission may require certain financial information to be submitted pursuant to section 623(g) of the Communications Act, 47 U.S.C. §543(g). Section 623(g) states as follows:

(g) COLLECTION OF INFORMATION.--The Commission shall, by regulation, require cable operators to file with the Commission or a franchising authority, as appropriate, within one year after the date of enactment of the Cable Television Consumer Protection and Competition Act of 1992 and annually thereafter, such financial information as may be needed for purposes of administering and enforcing this section.

§76.1801 Registration statement.

A system community unit shall be authorized to commence operation only after filing with the Commission the following information:

- (a) The legal name of the operator, Entity Identification or Social Security number, and whether the operator is an individual, private association, partnership, or corporation. If the operator is a partnership, the legal name of the partner responsible for communications with the Commission shall be supplied;
- (b) The assumed name (if any) used for doing business in the community;
- (c) The mail address, including zip code, and the telephone number to which all communications are to be directed;
- (d) The date the system provided service to 50 subscribers;
- (e) The name of the community or area served and the county in which it is located;
- (f) The television broadcast signals to be carried which previously have not been certified or registered.

§76.1802 Equal employment opportunity.

Each employment unit with six or more full-time employees shall file an annual employment report (FCC Form 395A) with the Commission on or before May 1 of each year, in accordance with Section 76.77.

§76.1803 Aeronautical frequencies: signal list.

The operator of a cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands (108-137 and 225-400 MHz), noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control, etc.). The timely filing of FCC Form 320 will meet this requirement.

§76.1804 Aeronautical frequencies: leakage monitoring (CLI).

The operator of a cable system shall notify the Commission before transmitting any carrier or other signal component with an average power level across a 25 kHz bandwidth in any 160 microsecond time period equal to or greater than 10⁻⁴ watts at any point in the cable distribution system on any new frequency or frequencies in the aeronautical radio frequency bands (108-137 and 225-400 MHz). Such notification shall include:

- (a) legal name and local address of the cable television operator;
- (b) the names and FCC identifiers (e.g., CA0001) of the system communities affected;
- (c) the names and telephone numbers of local system officials who are responsible for compliance with §§76.610 through 76.616 of the rules;
- (d) carrier and subcarrier frequencies and tolerance, types of modulation and the maximum average power levels of all carriers and subcarriers occurring at any location in the cable distribution system.
- (e) the geographical coordinates of a point near the center of the cable system, together with the distance (in kilometers) from the designated point to the most remote point of the cable plant, existing or planned, which defines a circle enclosing the entire cable plant;
- (f) a description of the routine monitoring procedure to be used; and
- (g) for cable operators subject to §76.611, the cumulative signal leakage index derived under §76.611(a)(1) or the results of airspace measurements derived under §76.611(a)(2), including a description of the method by which compliance with basic signal leakage criteria is achieved and the method of calibrating the measurement equipment. The information described in paragraph (g) shall be provided to the Commission prior to July 1, 1990 and each calendar year thereafter.

NOTE: Timely filing of FCC Form 320, "Basic Signal Leakage Performance Report," will satisfy the annual filing requirement of paragraph (g).

§76.1805 Alternative rate regulation agreements.

Small systems owned by small cable companies must file with the Commission a copy of any operative alternative rate regulation agreement entered into with a local franchising authority pursuant to Section 76.934(g), within 30 days after its effective date.